

***Industrial Development  
Revenue Bond Program  
Guidelines***

***Mississippi Business  
Finance Corporation***

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## TABLE OF CONTENTS

INTRODUCTION .....	1
GENERAL DESCRIPTION OF PROGRAM .....	2
Bonds .....	2
Loan Agreement .....	3
Fees and Other Charges .....	3
ELIGIBILITY REQUIREMENTS .....	4
Borrowers .....	4
Projects .....	4
Project Costs .....	5
Letter of Credit Provider.....	5
APPLICATION AND APPROVAL PROCEDURE.....	6
Review of Application.....	6
Adoption of Inducement Resolution.....	6
Other Hearings and Approvals .....	7
TYPICAL PROCESS .....	8
MISCELLANEOUS .....	9
Bond Cap Allocation .....	9
Guideline Amendments; Waivers.....	9
Pending Legislation .....	9
Additional Information .....	9
APPENDIX A .....	10
APPENDIX B .....	11
APPENDIX C .....	12

## **INTRODUCTION**

The Mississippi Business Finance Corporation's "MBFC" Industrial Development Bond Program (the Program) is designed to create jobs and promote economic development in the State of Mississippi. Under the Program Guidelines, tax-exempt and taxable bond proceeds may be loaned by MBFC to a qualified business for certain eligible projects. MBFC will derive funds for the Program from the sale of the bonds on behalf of qualified projects. Only bonds rated investment grade or higher or bonds purchased by a Qualified Bond Purchaser will be issued by MBFC. Bonds will be sold by MBFC publicly or will be placed with private investors.

These Program Guidelines describe the scope and limitations of the Program. Certain capitalized terms used in these Guidelines shall have the meanings set forth in Appendix A hereto or as otherwise defined in the Statute.

The Program has been authorized by the legislature of the State pursuant to the Statute. An eligible project under the Statute includes land, buildings, eligible equipment, facilities and/or improvements deemed by MBFC to be necessary for the promotion of economic development. Appendix B contains a description of qualified projects. The acquisition of existing facilities (to the extent permitted by Federal tax laws) or new construction projects are also qualified. In general, an applicant for financing assistance must be a qualified corporation, partnership or other business concern; and, both the applicant and its project must be eligible under the Statute, federal law where applicable and these Guidelines.

Applicants will be required to provide detailed information concerning itself, its principals and the scope of its project. Through compliance with State and Federal law, the applicant is ultimately responsible for the consequences of any misstatements, inaccuracies, and incompleteness.

## **GENERAL DESCRIPTION OF PROGRAM**

Financing for projects under the Program is made available through the sale of MBFC's industrial revenue bonds, the interest on which is tax-exempt or taxable depending on current Federal law. Each project is represented by a separate series of bonds and a separate loan agreement to be entered into between MBFC and the applicant, as borrower. Pursuant to each loan agreement, MBFC will loan bond proceeds to the borrower for the payment of eligible project costs, including the costs of issuance.

The borrower will be obligated, pursuant to the loan agreement, to make loan repayments in such amounts and at such times as shall be sufficient to enable MBFC to pay the principal of and interest on the applicable series of bonds as the same becomes due.

The interest rate on each series of bonds may be variable or fixed through maturity or for a determined period of time and may then be subject to periodic adjustment. The principal of each series of bonds will be amortized over a period not to exceed thirty (30) years. Cost of issuance of the bond issue, including bond counsel fees and other common fees, shall be paid from the proceeds of the bond issue.

In addition to the various benefits provided under the Program related to financing projects, companies are entitled to certain state and local tax incentives for projects financed with bonds through the Program. These incentives can include income tax credits, sales and use tax exemptions and ad valorem property tax exemptions.

### **Bonds**

For each project, MBFC will issue bonds to obtain the funds it may loan to the borrower. Bond proceeds may be used to finance eligible project costs and bond issuance costs, as more particularly set forth herein.

Only bonds rated investment grade or higher will be issued by MBFC. This typically requires that a letter of credit be obtained from a commercial bank or a guaranty provided by another company. The rating on the bonds depends entirely on the credit of the borrowing company, or the credit enhancement provided through a letter of credit or a guaranty. As an alternative, unrated bonds may be privately placed.

No bonds shall constitute an indebtedness of MBFC, State or any political subdivision or agency of the State or a pledge of the faith and credit or taxing power of any of the foregoing; but, such bonds shall be payable by MBFC solely from the revenues pledged therefore. In addition, no member or officer of the board of directors of MBFC nor any person executing the bonds on behalf of MBFC shall be personally liable by reason of the issuance thereof.

## **Loan Agreement**

The proceeds from the sale of each series of bonds will be loaned by MBFC to a qualified borrower to be applied to the payment of qualified project costs (including costs of issuance of the bonds) for an eligible project that has been approved by MBFC. To evidence such loan, MBFC and the borrower will enter into a loan agreement under which the borrower will agree to make loan repayments in such amounts and at such times as shall be sufficient to enable MBFC to pay the principal of and interest on the applicable series of bonds as the same becomes due. The borrower shall have the right under the loan agreement to make advance prepayments of its loan upon such terms and conditions as the applicable series of bonds may be redeemed. The effective interest rate of the loan under the Program will be a function of: (i) the interest rate borne by the bonds, (ii) the costs of issuance of the bonds, and (iii) the annual fixed costs attributable to the fees of MBFC, the bond trustee and the paying agent and, if applicable, and the letter of credit provider.

The maximum tax-exempt non-Gulf Opportunity Zone loan which a qualified applicant may borrow from MBFC for any project or projects is limited to ten million dollars (\$10,000,000) reduced by certain capital expenditures as required by the Internal Revenue Code.

The maximum term of a particular loan will be lesser of 120% of the average reasonable expected economic life of the facility being financed with the proceeds of such series of bonds or thirty (30) years or a lesser term if required by MBFC, the letter of credit provider, the Statute, the Internal Revenue Service or these Guidelines.

## **Fees and Other Charges**

The applicant will be responsible for three types of fees: (i) application and processing fees, (ii) bond and Program costs of issuance, and (iii) annual servicing fees.

- (a) **Application and Processing Fees:** The applicant will be required to pay to MBFC, concurrently with the submission of its application, an application fee in the amount of \$500. This application fee will not be refundable. This fee is not applicable for Gulf Opportunity Zone Projects and all taxable projects.
- (b) **Costs of issuance** include (to the extent applicable) the bond underwriter's discount and fees of its counsel, the acceptance fee of the bond trustee and paying agent and fees of their counsel, bond counsel fees, issuer counsel fees, printing cost, and rating agency fees.
- (c) **Annual Servicing Fees:** For tax-exempt non-Gulf Opportunity Zone projects, the borrowers will be obligated to make certain annual fee payments to MBFC representing  $\frac{1}{8}$  of 1% of the outstanding balance of the bonds at each anniversary of the issue. A one-time issuer fee, based on the amount of the transaction, is paid to MBFC on taxable bonds.

## **ELIGIBILITY REQUIREMENTS**

### **Borrowers**

In order for an applicant to qualify for a loan under the Program:

- (a) the recipient must be a person, firm, association, partnership, corporation or other legal entity engaged in a business;
- (b) the assistance must be requested for use by a business enterprise located or to be located within the State;
- (c) the recipient must be able to demonstrate to MBFC that the assistance will result in creation or maintenance of employment within the State;
- (d) the recipient must meet the tax-exempt financing eligibility requirements then imposed by State and Federal law for tax-exempt financings;
- (e) the recipient must have a viable and attainable business plan which includes an ability to repay the requested loan; and
- (f) the recipient and the project must meet any further requirements for eligibility set forth in the Statute or applicable regulations of MBFC.

### **Projects**

In order for a project to be eligible for financing under the Program, the project must meet the following requirements:

- (a) be located within the State;
- (b) consist of land, buildings, equipment, facilities and improvements (whether one or more), and otherwise meet the requirements for an eligible project under the Statute (see Appendix B to these Guidelines for a general description of these requirements);
- (c) for tax exempt financing, be eligible for tax-exempt financing under Sections 103 and 141-150 of the Internal Revenue Code or the Gulf Opportunity Zone Act of 2005 (Appendix C to these Guidelines for a general description of eligible financing projects); and,
- (d) be approved for financing by MBFC, the bond counsel to MBFC, the letter of credit provider or qualified bond purchaser.

## **Project Costs**

Under the Statute, the proceeds of a project loan may be used by a borrower generally to finance the following costs:

- (a) acquisition, construction, reconstruction, improvement and expansion of real property within the State;
- (b) acquisition of eligible machinery and equipment;
- (c) capitalized interest and, if approved by MBFC and its bond counsel, necessary reserve funds; and
- (d) the necessary expense of preparing, printing and selling the bonds.

It is expressly provided in the Statute that no bonds shall be issued in violation of Federal statutes or regulations prohibiting arbitrage profits.

The extent to which particular project costs allowable under the Statute may be financed from the proceeds of tax-exempt bonds is subject to the eligibility of the project and of such costs for tax-exempt bond financing under Sections 103 and 141-150 of the Internal Revenue Code and if applicable the Gulf Opportunity Zone Act of 2005.

Unless necessary to maintain employment and unless permitted by the Internal Revenue Code to be done on a tax-exempt basis, the proceeds of a loan may not be used to provide working capital, to finance inventory or to refinance existing indebtedness.

## **Letter of Credit Provider**

A letter of credit provider must be a financial institution acceptable to MBFC based upon mutually agreeable established criteria. In the event the letter of credit provider is unable to meet such criteria, MBFC may require that a confirming letter of credit be issued by a financial institution able to meet such eligibility criteria. Each letter of credit provider will be required to make certain periodic filings of financial statements and reports with MBFC.

## **APPLICATION AND APPROVAL PROCEDURE**

### **Adoption of Inducement Resolution**

Upon receipt of a request for inducement from an eligible company, accompanied by a written indication of interest from a Qualified Bond Purchaser or a financial institution issuing an underlying letter of credit in support of the bonds, MBFC shall consider, at a meeting of its board of directors, the adoption of an inducement resolution for a particular project. All such meetings of MBFC will be held at a time and place designated by MBFC.

If an inducement resolution is adopted by the board of directors of MBFC, the staff of MBFC will so advise the applicant. Please be advised that the adoption of an inducement resolution does not commit MBFC to loan funds for a project.

Certain costs paid or incurred by the applicant with respect to the project prior to the adoption of an inducement resolution may not qualify for tax-exempt financing. No construction work or other activity on the proposed project should be undertaken without consultation with either Issuer's staff or bond counsel. Certain activities that do not comply with State or Federal law may cause all or part of the proposed project to become ineligible for tax-exempt financing.

If the board of directors of MBFC declines to adopt the inducement resolution, the application will be considered denied and the applicant will be so notified by MBFC.

### **Review of Application**

Three (3) copies of the completed application form must be filed by the applicant with MBFC in order to commence the application procedure. The form of the application will be standardized and approved by MBFC and its bond counsel. Each application shall further be accompanied by a commitment from a Qualified Bond Purchaser or a financial institution issuing an underlying letter of credit in support of the project. A \$500 non-refundable application fee is due at this time.

Upon receipt of the application, MBFC will review the application on the basis of completeness, financial soundness, feasibility (including the financial ability of the borrower to repay the loan) and compliance with existing Guidelines. MBFC's staff will also forward a copy of the application to MBFC's bond counsel for review as to State and Federal law eligibility. The staff of MBFC or its bond counsel may require that additional information be supplied by the applicant in order to determine project eligibility.

The applicant shall execute an indemnity agreement and such other documents as MBFC shall require. Each such agreement and document shall be in the standardized form of MBFC.



## **Other Hearings and Approvals**

Other hearings and approvals required in the application process are as follows:

- (a) A public hearing with respect to the project as required by section 147(f) of the Internal Revenue Code for tax-exempt financing: This hearing must be held in a location which offers a reasonable opportunity to residents of the area where the project is, or will be, located to voice their opinions regarding the project and the issuance of bonds to provide funds to finance the eligible costs of the project.
- (b) Other Public Hearings and Examinations: MBFC may hold such hearings and examinations with respect to various applications as shall be necessary to determine whether the public purposes of the Statute and the development within a particular community will be accomplished by granting financial assistance to such applicant
- (c) Issuer Approval of Bonds: MBFC must approve the issuance of bonds for each project in accordance with applicable provisions of the Statute and the Guidelines. Approvals will be evidenced by a resolution of MBFC following a public hearing.
- (d) For tax-exempt financing: The borrower in conjunction with bond counsel is required to acquire an allocation of Private Activity Bond Volume Cap from the Mississippi Development Authority.

## **TYPICAL PROCESS**

Financing manufacturing and processing projects with Industrial Development Revenue Bonds in Mississippi is a relatively simple and quick process, normally requiring about three months from start to delivery date. The following steps are involved in a typical tax-exempt bond issue. An application is not required for tax-exempt GO Zone Bonds or on taxable issues.

- The project is presented to the MBFC Board of Directors for consideration of an inducement resolution.
- A qualified company must submit three copies of a completed application and a non-refundable application fee to MBFC.
- Each application must be accompanied by a written commitment from a qualified bond purchaser or a financial institution to issue a letter of credit in support of the bonds.
- MBFC staff will review applications on the basis of completeness, program guidelines, financial soundness of the company, and state and federal law eligibility.
- If adopted, MBFC will require execution of an indemnity agreement. Adoption, however, does not commit MBFC to sell bonds to finance the project.
- In accordance with the Internal revenue Code, local public hearings must be held before bonds are issued.
- At the bond closing, company representatives will execute all required documents.

## **MISCELLANEOUS**

### **Bond Cap Allocation**

The Tax Reform Act of 1986 established new lower limits in each state on the issuance amounts of private purpose, tax-exempt debt. Issuance authority for any project financed through the Program will require MBFC to apply to the Mississippi Development Authority for a portion of the Mississippi allocation for such purpose and, under current Mississippi law; such allocations (not including Gulf Opportunity Zone Requests) are generally awarded on a first-come, first-served basis. Go Zone allocations are awarded pursuant to the State Gulf Opportunity Zone Allocation Guidelines.

### **Guideline Amendments; Waivers**

These Guidelines may be amended by resolution adopted by MBFC at any time. MBFC, in its discretion, may further temporarily waive any requirement of these Guidelines to the extent that the result of such waiver is to promote the public purposes of the Statute and is not prohibited by State law or the Internal Revenue Code.

### **Pending Legislation**

There may be pending State legislation and Federal regulations which could have an impact on certain aspects of the operations of the Program. These Guidelines are subject to modification to the extent mandated by relevant changes in such legislation and regulations enacted after publication and distribution of the Guidelines.

### **Additional Information**

Additional information with respect to the Program, these Guidelines and MBFC may be obtained by contacting:

Mississippi Business Finance Corporation  
735 Riverside Drive  
Suite 300  
Jackson, MS 39202  
Phone: (601) 355-6232  
Fax: (601) 355-3888

## **APPENDIX A**

### **CERTAIN DEFINED TERMS**

The following capitalized terms used in these Guidelines shall have the respective meanings set forth below

**State** - shall mean the State of Mississippi.

**Guidelines or Program Guidelines** - shall mean these Program Guidelines for the Mississippi Small Business Financing Act of the Mississippi Business Finance Corporation, as the same may be modified from time to time.

**Internal Revenue Code** - shall mean any applicable Federal tax laws, including without limitation the Internal Revenue Code of 1986, as amended and all rules, regulations, and rulings promulgated thereunder.

**Issuer** - shall mean the Mississippi Business Finance Corporation (formerly the Certified Development Company of Mississippi, Inc.).

**Letter of Credit** - shall mean either a standby or direct—pay irrevocable letter of credit of a letter of credit provider, issued in favor of the bond trustee or Issuer for the benefit of a borrower.

**Letter of Credit Provider** - shall mean a financial institution eligible under the Guidelines and which shall issue a Letter of Credit for the benefit of a borrower.

**Program** - shall mean the program as set forth in the guidelines.

**Program Documents** - shall mean those Program documents prepared by MBFC with the advice of its bond counsel for implementing the Program and shall include applications and all bond and finance documents.

**Statute** - shall mean, §57-10-201 et seq. and §57-10-401 et seq., Mississippi Code 1972, as amended, as applicable.

**Qualified Bond Purchaser** - shall mean an entity which purchases the bonds for its own account, or the purpose of investment and not with a view to the distribution or resale thereof, provided that the right is reserved by such entity purchasing the bonds to dispose of all or any part of such bonds if, in the future, it is deemed advisable to do so. A Qualified Bond Purchaser shall represent at closing that it has not sold nor offered to sell the bonds by means of any form of solicitation or advertising.

## **APPENDIX B**

### **QUALIFIED PROJECTS**

MBFC is authorized under the Statute to finance projects consisting of any land and building or buildings (including office space related and subordinate to any of the facilities), any facility or other improvement thereon, and all real and personal properties, including operating equipment and machinery deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for a manufacturing activity. A manufacturing facility is defined as any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in condition of such property.)

MBFC considers each project on a case-by-case basis. The company must have adequate financial resources to give reasonable assurance that all principal and interest on the bonds can be repaid pursuant to the Program documents. Generally, it must be shown that a particular project will benefit the local economy by providing increased employment. Notwithstanding anything contained herein to the contrary, MBFC will not issue bonds for the direct or indirect benefit of any project involved in gaming, ancillary gaming activities or condominiums.

## **APPENDIX C**

### **Tax-exempt Bonds.**

The recipient must meet the tax-exempt financing eligibility requirements imposed by state and federal law. For projects outside the Gulf Opportunity Zone, at present, only manufacturing and processing businesses are eligible.

### **Taxable Bonds.**

Below are examples of businesses that are eligible for taxable Industrial Development Revenue Bonds.

- Companies which manufacture, process, store, warehouse, assemble or distribute agricultural, mining or industrial products.
- Research and development enterprises engaged in developing or improving new or existing products or processes; and
- Hotels, offices, shopping centers or other commercial operations that the board may approve.

MBFC considers each project on a case-by-case basis. The company must have adequate financial resources to give reasonable assurance that all principal and interest on the bonds can be paid. Generally, it must be shown that the project will benefit the local economy by providing increased employment.

### **Gulf Opportunity Zone Act of 2005.**

Pursuant to the Act, the State of Mississippi is authorized to issue in excess of \$4.8 billion in qualified Gulf Opportunity Zone Bonds ("GO Zone Bond") and treats such as exempt facility bonds. A qualified GO Zone Bond is any bond issued as part of an issue if: (1) 95% or more of the net proceeds of such issue are to be used for qualified project costs; (2) such bond is issued by the State of Mississippi; (3) such bond is designated for purposes of the Act by the Governor; (4) such bond is issued after December 21<sup>st</sup>, 2005 and prior to January 1<sup>st</sup>, 2011; and (5) no portion of the proceeds of such issue is used to provide any property of which is a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

The \$4.8 billion plus in private activity volume cap promulgated under the Act is separate from the traditional volume limitation discussed hereinabove.

Qualified project costs include the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed improvements associated with such property) located in the Gulf Opportunity Zone and public utility property located in the Gulf Opportunity Zone.

Examples of nonresidential real property projects that can be financed with GO Zone Bonds include the following:

- Shopping Centers
- Medical Facilities
- Office Buildings
- Hotels
- Restaurants
- Warehouses
- Industrial Plants

#### Public Utility Property

The term public utility property means property used predominantly in the trade or business of the furnishing or sale of: (1) electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, (3) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 or (4) transportation of gas or steam by pipeline. In addition, the rates for such furnishing or sale, as the case may be, must be established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

#### Limitations on GO Zone Bonds

The Act disallows the 50% first-year bonus depreciation and utilization of the proceeds of tax exempt bonds to finance the project.

In addition, no GO Zone Bonds shall be issued which are to be used for movable fixtures and equipment. The terms “movable fixtures and equipment” does not include components that are assembled to construct an industrial plant

No more than 25% of the net proceeds of GO Zone Bonds can be used, directly or indirectly, to acquire land.

If the project includes the acquisition of an existing building, the rehabilitation expenditures with respect to such building must equal or exceed 50% of the portion of the cost of acquiring such building (and equipment) financed with the proceeds of GO Zone Bonds.